REMARKS

In response to the Office Action dated June 28, 2010, the Assignee respectfully requests reconsideration based on the above amendments and on the following remarks.

Claims 1, 3-6, 8, and 17-20 are pending in this application. Claims 2, 7, and 9-16 were previously canceled without prejudice or disclaimer.

Rejection under § 112

The Office rejected claims 1, 3-6, 8, and 17-20 under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. "To comply with the written description requirement …, each claim limitation must be expressly, implicitly, or inherently supported in the originally filed disclosure." DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE § 2163 (II) (3) (b) (Rev. 1, Feb. 2003) (hereinafter "M.P.E.P."). The Office, in particular, asserts that the as-filed specification fails to support "*storing a webpage in memory of the server for distribution to advertisers*," "*sending the webpage to the advertisers to notify the advertisers of a future advertisement time slot in the scheduled lineup*," and "*receiving the webpage from an advertiser*."

The Assignee, very respectfully, disagrees. The Assignee strongly asserts that the written description requirement is completely satisfied. The as-filed application fully conveys to one of ordinary skill in the art how web-based forms are used for provisioning and managing advertisements. The as-filed application, for example, explains:

> The system of FIG. 1 comprises an interactive server 28 operable for advertisement management. **As is shown, the network content provider 26 and the advertisers 20, 22, 24 are connected to the interactive server 28** via the network content provider 26. The interactive server is capable of managing advertisements, receiving requests, checking a plurality of pre-determined criteria, and responding to the requests from the advertisers 20, 22, 24.

Signals containing requests and programming content furnished by the advertisers 20, 22, 24 are sent via suitable communication paths to content provider 26 and ultimately to the interactive server 28 comprising a processor for processing information. A provisioning technique available to an advertiser 22 with Internet access includes a **Web-based form of entry of advertisement information**. **Using such a technique, an advertiser 22 using a browser running on a computer with an Internet connection accesses the interactive server and inputs requests and receives responses. Requests may include specific information relating to a particular advertisement or time slot, such as override and non-override categorization, and the override option. Advertisement schedules, characteristics, identifiers, and pricing may be stored in a database 30 of the interactive server 28.** Each individual advertisement may have an associated identifier 32 that is used to identify the specific advertisement. The identifier 32 may include descriptive information such as the time length of the advertisement and file size. When a signal is received by the interactive server 28, the interactive server 28 identifies the selected advertisement and may insert it into a program time slot using if a series of checkpoints are completed and approved, as discussed above.

The network content provider 26 is able to insert the advertisement, identified by the interactive server 28 using its identifier, into the broadcast transmission 34. The primary functionality of the network content provider 26 is provided by the interactive server 28, which stores and manages the advertisements provided by the advertisers, and which responds to requests from the advertisers.

In one embodiment of the present invention, a provisioning method is provided in which **an advertiser may access the interactive server 28 and override a prescheduled advertisement** based on monitoring and marketing tools. The monitoring and marketing tools provide data to an advertiser which aid in selecting the most desirable time slot for each particular advertisement based on the data. Using data gathered regarding viewing habits, such as set top boxes use for monitoring viewing habits and collecting information, to distinguish more-valuable from less-valuable viewers, along with override and non-override categories, content and advertisements may be matched with more-valuable and less-valuable viewer subsets.

FIG. 2 illustrates a preferred embodiment of an advertising management method in which **an advertiser, by paying a premium, may replace a scheduled advertisement with a different advertisement**.

See U.S. Application 10/020,779, filed December 14, 2001, at page 7, line 28 through page 8, line 30.

The Assignee, then, strongly asserts that the written description requirement is satisfied. At least the above passages fully convey to one of ordinary skill in the art how web-based forms are used for provisioning and managing advertisements. The Assignee, then, respectfully submits that the pending claims fully comply with the written description requirement. The Office is thus respectfully requested to remove the § 112 rejection.

Rejection of Claims under § 103 (a)

The Office rejected claims 1, 3-6, 8, and 17-20 under 35 U.S.C. § 103 (a) as being obvious over U.S. Patent 6,463,585 to Hendricks, *et al.* in view of U.S. Patent Application Publication 2002/0087573 to Reuning, *et al.*

These claims, though, are not obvious over *Hendricks* with *Reuning*. These claims have been amended to recite, or to incorporate, features that are not disclosed or suggested by *Hendricks* with *Reuning*. Independent claim 1, for example, has been amended to recite "*the non-overrideable categorization not allowing replacement of the advertisement in the scheduled lineup, such that the advertisement is displayed at the subscriber's equipment*" (emphasis added). Independent claim 1 has also been amended to recite "*receiving ... a financial premium that the advertiser will pay to replace the advertisement with the different advertisement*" (emphasis added). Independent claim 1 has also been amended to recite "*determining whether the advertisement is categorized as overrideable or non-overrideable*," "*accepting the financial premium from the advertiser when the advertisement is categorized as overrideable*," and "*replacing the advertisement in the scheduled lineup with the different advertisement*" (emphasis added). Support for these features may be found at least in the as-filed application at page 5, lines 6-18 and at page 7, lines 1-18. Independent claim 17 recites similar features.

At least these features are not obvious over *Hendricks* with *Reuning*. The proposed combination of *Hendricks* with *Reuning* develops a "switching plan" among different feeder channels. As *Hendricks* explains, "programs watched information" is received to "develop a program line-up." *See* U.S. Patent 6,463,585 to Hendricks *et al.* (Oct. 8, 2002) at column 11,

lines 42-44 and 51-54. A "switching plan" is then developed for different "feeder channels" that carry advertising and programming. *See id.* at column 6, lines 1-13. When a programming break occurs, the end user's terminal is switched among the feeder channels, based upon viewing habits and demographics, to deliver targeted advertising. *See id.* at column 6, lines 24-42. As *Hendricks* explains:

> **To efficiently convey targeted advertisements** to a desired audience, the operations center 202 may employ a multiple channel architecture that includes program channels and a number of **feeder channels to carry alternate programming, such as alternate targeted advertising**. **The program channel carries a main program, such as a broadcast television show, and accompanying advertisements.** The feeder channels are ancillary video/audio channels, which are delivered to the set top terminal 220, and which provide primarily alternate commercial and promotional interstitial material for use during program breaks. The concept of targeted advertising makes **use of feeder channels to allow for the set top terminals 220 to be switched to the most appropriate feeder channel** at a program break, with appropriateness being based on information known about the demographics and viewing habits of users of the set top terminals 220, for example.
>
> **Careful management of the feeder channels**, including their dynamic switching and control of the advertising airing on the feeder channels at any given time can greatly increase both the advertisers' likelihood to reach an interested viewer, as well as the likelihood a viewer is interested in a specific advertisement. **The feeder channels are assigned a series of advertisements and a switching plan is developed** at the operations center 202 **that directs individual set top terminals 220 to remain at the program channel or to switch from the program channel to a specific feeder channel** upon the occurrence of the program break.
>
> ...
>
> A spot placement engine determines the optimum types of spots to be placed based on break timing and feeder channel availability. The output of the spot placement engine includes an ad playbill that can be used for billing, analysis and commercial trafficking purposes. The spot placement engine takes into account likely viewers of a program, the desirability of available spots to those viewers, targeting criteria, and the number of feeder channels available for each program break. **The spot being placed in the program break serves as the default targeted advertisement (most appropriate to the overall audience) in case feeder channels are not available for alternate targeted advertising.** The default targeted advertising also supports cable

system that either are not configured to provide targeted advertising, or are receiving other programming.

Once specific spots are selected for each program break, the set top groups that should remain with the program channel, and those that should tune to a particular feeder channel at each program break are determined, based on target criteria of interest. To accomplish the switching of set top terminals 220 to the appropriate feeder channels requires a detailed switching plan. The switching plan is distributed to the necessary control points in the system, such as the cable headends 208, which are then responsible for the periodic transmission of the switching plans to the set top terminals 220. Alternately, the switching plans are distributed directly to the set top terminals 220 from the operations center 202.

After the set top terminal 220 receives and stores the switching plan, **the set top terminal 220 will tune to the appropriate feeder channel during the corresponding program break**, if the set top terminal 220 is tuned to a program channel that carries programming that cooperates with the feeder channel architecture. The viewer may, at any time, override feeder channel switching by selecting a non-cooperating program channel.

See U.S. Patent 6,463,585 to Hendricks *et al.* at column 26, lines 13-41 and at column 27, line 48 through column 28, line 16.

The independent claims, then, cannot be obvious over *Hendricks* with *Reuning*. First, *Hendricks* with *Reuning* fails to teach or suggest "*non-overrideable advertisements*," where the "*the non-overrideable categorization*" does not allow "*replacement of the advertisement in the scheduled lineup, such that the advertisement is displayed at the subscriber's equipment*" (emphasis added). The proposed combination of *Hendricks* with *Reuning*, in contradistinction, develops a lineup and then switches to different feeder channels to deliver targeted advertising to an end-user's terminal. So *Hendricks* with *Reuning* does not develop a "*scheduled lineup*" and then replace advertisements "*in the scheduled lineup*." The proposed combination of *Hendricks* with *Reuning*, instead, delivers the lineup and then switches to different feeder channels to deliver targeted advertising. *Hendricks* with *Reuning* does not replace an advertisement "*in the scheduled lineup*," as the independent claims recite. For this reason alone, then, the independent claims cannot be obvious over *Hendricks* with *Reuning*.

The independent claims recite even more distinguishing features. The independent claims also recite "*non-overrideable advertisements*," where the "*the non-overrideable categorization*" does NOT allow "*replacement of the advertisement in the scheduled lineup, such that the advertisement is displayed at the subscriber's equipment*" (emphasis added). *Hendricks* with *Reuning* fails to realize that some advertisements are "*non-overrideable*" and not replaced "*in the scheduled lineup.*" This concept completely eludes *Hendricks* with *Reuning*. The proposed combination of *Hendricks* with *Reuning* only explains a "default targeted advertisement ... in case feeder channels are not available for alternate targeted advertising." *See* U.S. Patent 6,463,585 to Hendricks *et al.* at column 27, lines 56-59. *Hendricks* with *Reuning* simply fails to realize that some advertisements are "*non-overrideable*" and not replaced. The independent claims, then, cannot be obvious over *Hendricks* with *Reuning*.

The independent claims recite yet more distinguishing features. The independent claims also recite "*replacing the advertisement in the scheduled lineup with the different advertisement ... such that the different advertisement is inserted into the programming content*" (emphasis added). As the above paragraphs explained, *Hendricks* with *Reuning* develops a lineup and then switches to different feeder channels for targeted advertising. So *Hendricks* with *Reuning* does not replace and insert in the "*in the scheduled lineup.*" The independent claims, then, cannot be obvious over *Hendricks* with *Reuning*.

The independent claims recite even more distinguishing features. The independent claims also recite "*declining the financial premium from the advertiser when the advertisement is categorized as non-overrideable*" and "*declining to replace the advertisement in the scheduled lineup*." The proposed combination of *Hendricks* with *Reuning* simply fails to realize that some advertisements are "*non-overrideable*" and not replaced, even though the "*financial premium*" is offered. While *Hendricks* with *Reuning* explains a "price" for "various programs," *see Hendricks* at column 11, lines 63-65, *Hendricks* with *Reuning* fails to describe ANY association between "*financial premium*" and "*non-overrideable*" advertisements. The independent claims, then, cannot be obvious over *Hendricks* with *Reuning*.

Claims 1, 3-6, 8, and 17-20, then, cannot be obvious over *Hendricks* with *Reuning*. The independent claims recite many distinguishing features, and the dependent claims incorporate these distinguishing feature and recite additional features. One of ordinary skill in the art, then, would not think that claims 1, 3-6, 8, and 17-20 are obvious. The Office is thus respectfully requested to remove the § 103 (a) rejection of these claims.

New Claim 21

This response presents new independent claim 21. New independent claim 21 recites some features that are similar to independent claims 1 and 17. New independent claim 21, then, must also distinguish over *Hendricks* with *Reuning*.

No excess claim fee is due. The number of pending independent claims is three (3), and the number of pending claims does not exceed twenty (20). No excess claim fee is due.

If any questions arise, the Office is requested to contact the undersigned at (919) 469-2629 or *scott@scottzimmerman.com*.

37 C.F.R. § 1.8 CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being electronically transmitted via the USPTO EFS web interface on September 28, 2010.

Scott P. Zimmerman
Attorney for the Assignee
Reg. No. 41,390